



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Mark Dinsmore

Serial No.: 10/790,635 (which is a reissue application of  
6,480,568, issued December 10, 2002)

Filed: March 1, 2004

Title: Optically Driven Therapeutic Radiation Source

Attorney Ref.: 56249-172 (PHLL-155RE)

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**CERTIFICATE OF MAILING (37 C.F.R. § 1.8(a))**

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail under 37 CFR 1.8(a) in an envelope addressed to Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

Date:

11/4/04

*Elsie M. Saraglow*  
Elsie M. Saraglow

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Mail Stop Missing Parts  
Assistant Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION UNDER 37 CFR § 1.47(b)**

Sir:

In response to the Notice To File Missing Parts of , petition is hereby made to accept the Declaration and Power of Attorney, which is enclosed herewith and is signed by Mark G. Lappin on behalf of and as an agent of the sole inventor of the above-identified reissue application, pursuant to the provisions of 37 C.F.R. § 1.47(b). The Notice To File Missing Parts of has a two (2) month shortened statutory period for response expiring July 4, 2004, and a Petition for an extension of time to respond to the Notice to File Missing Parts is being filed concurrently herewith.

**A. SOLE INVENTOR**

Mark Dinsmore is the sole inventor of the above-identified reissue application ("Reissue Application"). At the time Mark Dinsmore invented the subject matter of the Reissue Application ("Invention"), he was an employee of Photoelectron Corporation ("Photoelectron").

**B. APPLICANT MAKES OATH**

In accordance with M.P.E.P. §409.03(b), the undersigned, Mark G. Lappin, hereby makes application for the Invention on behalf of and as agent for an inventor who refuses to sign the Declaration and Power of Attorney for the Reissue Application ("Application Papers"). Mark G. Lappin hereby states that he is authorized to sign on behalf of Carl Zeiss AG, the current assignee of the Reissue Application, in this matter for this purpose.

**C. APPLICANT'S RELATIONSHIP TO INVENTOR**

In accordance with M.P.E.P. § 409.03(b), applicant Mark G. Lappin is a registered patent attorney (Registration No. 26,618) in the Intellectual Property Department of McDermott Will & Emery LLP, acting on behalf of Carl Zeiss AG, who acquired the Reissue Application from Photoelectron. Photoelectron is the original assignee of Mark Dinsmore's interest in the Reissue Application.

**D. INVENTOR REFUSED TO SIGN THE APPLICATION PAPERS**

In accordance with M.P.E.P. §409.03(d), 1) Mark Dinsmore refused to sign the Application Papers, despite having been asked to do so; and 2) Mark Dinsmore gave a

reason for refusing to sign the Application Papers, namely that he was concerned that signing the Application Papers might limit his future business activities.

**E. PROOF OF REFUSAL TO EXECUTE THE APPLICATION PAPERS**

In accordance with M.P.E.P. §409.03(d), Mark G. Lappin submits herewith a "Declaration in Support of a Petition Under 37 C.F.R. § 1.47(b)," which fully describes the facts that are relied upon to establish that Mark Dinsmore refused to sign the Application Papers.

**F. LAST KNOWN ADDRESS**

In accordance with M.P.E.P. §409.03(e), the last known address of Mark Dinsmore is: 25 Wadsworth Road, Sudbury, MA 01776.

**G. THE INVENTOR HAS ASSIGNED THE INVENTION TO CARL ZEISS AG**

In accordance with M.P.E.P. §409.03(f), the inventor Mark Dinsmore assigned the Reissue Application to Photoelectron, which in turn assigned the Reissue Application to Carl Zeiss AG. A copy of the relevant assignment documents ("Assignment Documents") are attached to this petition. The Assignment Documents establish a prima facie case that Carl Zeiss AG has a proprietary interest in the subject matter of the Reissue Application.

**H. FILING OF THE APPLICATION IS NECESSARY TO PRESERVE THE RIGHTS OF CARL ZEISS AG**

In accordance with M.P.E.P. §409.03(g), the refusal by Mark Dinsmore to sign the Application Papers fails to preserve Carl Zeiss AG's rights granted under the

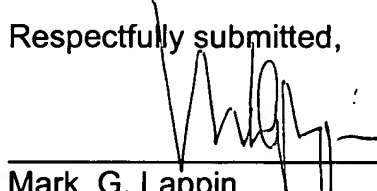
Assignment Documents, and will result in irreparable damage by causing the abandonment of the Reissue Application for failure to comply with the statutory requirements of 37 C.F.R. §1.497. The filing of the Reissue Application is necessary to preserve the rights of Carl Zeiss AG.

**I. PETITION FEE**

The Commissioner is hereby authorized to charge the petition fee in accordance with 37 C.F.R. 1.117(i), as well as the petition fee for an extension of time under 37 C.F.R. § 1.136, to Deposit Account 50-1133. The Commissioner is hereby authorized to charge any additional fees that may be due, or credit any overpayment of same, to Deposit Account No. 50-1133.

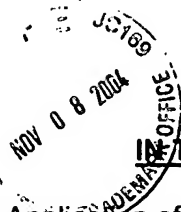
Date: November 4, 2004

Respectfully submitted,



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Mark G. Lappin  
Registration Number 26,618  
McDERMOTT WILL & EMERY LLP  
28 State Street  
Boston, Massachusetts 02109  
Tel. (617) 535-4043  
Fax: (617) 535-3800



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Mark Dinsmore

Serial No.: 10/790,635 (which is a reissue application of  
6,480,568, issued December 10, 2002)

Filed: March 1, 2004

Title: Optically Driven Therapeutic Radiation Source

Attorney Ref.: 56249-172 (PHLL-155RE)

Mail Stop Missing Parts  
Assistant Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

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Date: 11/4/04

Elsie M. Saraglow  
Elsie M. Saraglow

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**DECLARATION OF MARK G. LAPPIN FILED  
IN SUPPORT OF PETITION UNDER 37 C.F.R. § 1.47(b)**

I, Mark G. Lappin, to the best of my knowledge and belief, do hereby state as follows:

1. I am a registered patent attorney (Registration No. 26,618) in the Intellectual Property Department of McDermott Will & Emery LLP, acting on behalf of Carl Zeiss AG, who is the current assignee of the above-referenced reissue application ("Reissue Application").
2. Mark Dinsmore is the sole inventor of the Reissue Application.
3. Mark Dinsmore is the sole inventor of U.S. Patent No. 6,480,568B2 ("Underlying Patent"), upon which the Reissue Application is based.
4. I filed and prosecuted the application that issued in due course as the Underlying Patent ("Underlying Application").
6. Because Mark Dinsmore is the sole inventor of the Underlying Patent, has reviewed the contents of the Underlying Application, and has signed the application papers for the Underlying Application, Mark Dinsmore is thoroughly familiar with the subject matter

disclosed in the Reissue Application.

7. On or about November 3, 2004, I spoke with Mark Dinsmore, explaining to him the proposed changes to the claims of the Reissue Application, as compared to the claims of the Underlying Patent.

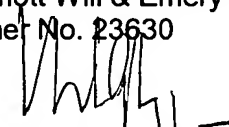
9. The Reissue Application was offered to Mark Dinsmore, and Mark Dinsmore's signature of the Declaration and Power of Attorney for the Reissue Application ("Application Papers") was solicited.

9. Mark Dinsmore expressly stated that he would not sign the Application Papers. Mark Dinsmore's express statement occurred on November 3, 2004, in Massachusetts.

10. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of any application or patent issued thereon.

Respectfully submitted,  
McDermott Will & Emery LLP  
Customer No. 23630

Date: November 4, 2004

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Mark G. Lappin  
Registration Number 26,618  
28 State Street  
Boston, Massachusetts 02109  
Tel. (617) 535-4043  
Fax: (617) 535-3800



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Re Application of: Mark Dinsmore

Serial No.: 10/790,635  
(which is a reissue application of U.S. Patent No. 6,480,568,  
issued November 12, 2002)

Filed: March 1, 2004

Title: OPTICALLY DRIVEN THERAPEUTIC RADIATION SOURCE

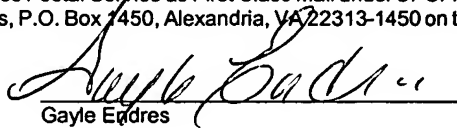
Attorney Ref.: 56249-172 (PHLL-155RE)

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Date: 11/4/04

  
Gayle Endres

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Mail Stop Missing Parts  
Assistant Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**ASSENT OF ASSIGNEE TO REISSUE**

Sir:

The undersigned **Carl Zeiss AG**, with a post address **Carl Zeiss Strass 22, 73447 Oberkochen, Germany**, assignee of the entire interest in the above-mentioned Letters Patent, hereby assents to the accompanying reissue patent application. Attached is a "Statement Under 37 CFR 3.73(b)," establishing the right of the assignee, **Carl Zeiss AG**, doing business as **Carl Zeiss AG**, to take action in this reissue application. The undersigned is empowered to sign this certificate on behalf of the assignee.

Respectfully submitted,

**CARL ZEISS AG**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Mark Dinsmore

Serial No.: 10/790,635  
(which is a reissue application of U.S. Patent No. 6,480,568,  
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Filed: March 1, 2004

Title: OPTICALLY DRIVEN THERAPEUTIC RADIATION SOURCE

Attorney Ref.: 56249-172 (PHLL-155RE)

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Date: 11/4/04

Gayle Endres

Mail Stop Missing Parts  
Assistant Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**STATEMENT UNDER 37 CFR 3.73(b)**

Carl Zeiss AG

*(Name of Assignee)*

*(Type of Assignee)*

certifies that it is the assignee of the entire right, title and interest in the patent application identified above by virtue of:

- A. ☒ An assignment from the inventor(s) of the patent application identified above. The assignment was recorded in the Patent and Trademark Office at Reel 012640, Frame 0834 for which a copy thereof is attached.

AND

- B. ☒ A chain of title (Asset Purchase Agreement) from the inventor(s), of the patent application identified above, to the current assignee as shown below:

1. From: Photoelectron Corporation To: Carl-Zeiss-Stiftung doing  
business as Carl Zeiss

The document was recorded in the Patent and Trademark Office at

Reel 014981 Frame 0591, for which a copy thereof is attached.



2. From: \_\_\_\_\_ To: \_\_\_\_\_

The document was recorded in the Patent and Trademark Office at

Reel \_\_\_\_\_ Frame \_\_\_\_\_ , for which a copy is attached.

3. From: \_\_\_\_\_ To: \_\_\_\_\_

The document was recorded in the Patent and Trademark Office at

Reel \_\_\_\_\_ Frame \_\_\_\_\_ , for which a copy is attached.

☐ Additional documents in the chain of title are listed on at.

☐ Copies of assignments or other documents in the chain of title are attached.

The undersigned has reviewed all the documents in the chain of title of the patent application identified above and, to the best of undersigned's knowledge and belief, title is in the assignee identified above.

The undersigned (whose title is supplied below) is empowered to sign this certificate on behalf of the assignee.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

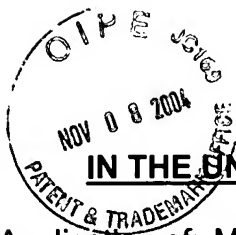
Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Signature: \_\_\_\_\_



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Date: 11/4/04

Elsie M. Saraglow  
Elsie M. Saraglow

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**STATEMENT EXPLAINING CHANGE  
IN ASSIGNEE NAME**

I, Mark G. Lappin, to the best of my knowledge and belief, do hereby state as follows:

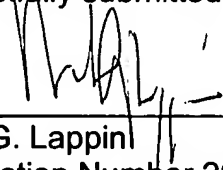
1. I am a registered patent attorney (Registration No. 26,618) in the Intellectual Property Department of McDermott, Will & Emery, acting on behalf of Carl Zeiss AG.

2. The current assignee of the above-referenced reissue application ("Reissue Application"), as shown in assignment document ("Assignment Document") recorded in the United States Patent and Trademark Office at Reel 012640, Frame 0834, is "Carl-Zeiss-Stiftung Doing Business as Carl Zeiss."

3. On July 1, 2004, "Carl-Zeiss-Stiftung Doing Business as Carl Zeiss" changed its legal status to a German stock corporation and concurrently changed its name to "Carl Zeiss AG." A document showing the name change is attached hereto.

4. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of any application or patent issued thereon.

Respectfully submitted,



Date: November 4, 2004

---

Mark G. Lappin  
Registration Number 26,618  
McDERMOTT, WILL & EMERY LLP  
28 State Street  
Boston, Massachusetts 02109  
Tel.: (617) 535-4043  
Fax: (617) 535-3800



Carl Zeiss 73446 Oberkochen

Carl Zeiss  
Carl-Zeiss-Straße 22  
73447 Oberkochen  
Germany

Phone: ++49 (7364)

Fax: ++49 (7364)

e-mail:

Division/Dept.:

Your contact:

Your ref.:

Yours of:

Our ref.:

Date: August 11, 1998

## Statement

It is hereby stated that „Carl Zeiss“ is no corporation separate and independent from „Carl-Zeiss-Stiftung“ but was and is the trade name under which „Carl-Zeiss-Stiftung“ was and is doing business as authorised by Article 17 of the German Commercial Code.

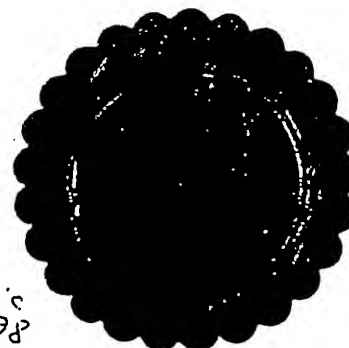
Under the said Article 17, the „firm“ of a merchant is the name under which the merchant (which, in the present case is „Carl-Zeiss-Stiftung“) acts in the trade and signs. A merchant can, under its „firm“, be sued and can sue.

*Carolina Zeiss*

Before me

*[Signature]*

*Notary Public  
11.08.1998  
1156*



Headquarters:  
Phone: ++49 (7364) 20-0  
Fax: ++49 (7364) 6808  
Internet: <http://www.zeiss.de>  
e-mail: [info@zeiss.de](mailto:info@zeiss.de)

Deutsche Bank AG Heidenheim  
Account 2125367 (BLZ 61370086)  
Commercial register:  
Heidenheim, HRA 1010  
USt-IdNr. DE81119940

Board of Management:  
Dr.-Ing. Peter M. Grassmann  
Dr. Wolfgang Jahrreiss